

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE NEW YORK TIMES COMPANY,

Plaintiff,

v.

MICROSOFT CORPORATION, OPENAI,
INC., OPENAI LP, OPENAI GP, LLC,
OPENAI, LLC, OPENAI OPCO LLC,
OPENAI GLOBAL LLC, OAI
CORPORATION, LLC, and OPENAI
HOLDINGS, LLC,

Defendants.

X

No. 1:23-cv-11195-SHS-OTW

DAILY NEWS, LP; CHICAGO TRIBUNE
COMPANY, LLC; ORLANDO SENTINEL
COMMUNICATIONS COMPANY, LLC;
SUN-SENTINEL COMPANY, LLC; SAN
JOSE MERCURY-NEWS, LLC; DP MEDIA
NETWORK, LLC; ORB PUBLISHING,
LLC; AND NORTHWEST
PUBLICATIONS, LLC,

Plaintiffs,

v.

MICROSOFT CORPORATION, OPENAI,
INC., OPENAI LP, OPENAI GP, LLC,
OPENAI, LLC, OPENAI OPCO LLC,
OPENAI GLOBAL LLC, OAI
CORPORATION, LLC, OPENAI
HOLDINGS, LLC,

Defendants.

X

No. 1:24-cv-03285-SHS-OTW

THE CENTER FOR INVESTIGATIVE
REPORTING, INC.,

Plaintiff,

X

No. 1:24-cv-04872-SHS

V.	:
	:
OPENAI, INC., OPENAI GP, LLC,	:
OPENAI, LLC, OPENAI OPCO LLC,	:
OPENAI GLOBAL LLC, OAI	:
CORPORATION, LLC, OPENAI	:
HOLDINGS, LLC, and MICROSOFT	:
CORPORATION,	:
	:
Defendants.	:
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**DECLARATION OF MICHAEL TRINH IN SUPPORT OF OPENAI DEFENDANTS’
OPPOSITION TO THE NEWS PLAINTIFFS’ MOTION TO COMPEL OPENAI TO
PRESERVE OUTPUT LOG DATA ON A GOING-FORWARD BASIS (ECF 379)**

I, Michael Trinh, hereby declare as follows:

1. I am Associate General Counsel, Litigation and Discovery, at OpenAI. I submit this declaration in support of the OpenAI Defendants' Opposition to the News Plaintiffs' Motion to Compel OpenAI to Preserve Output Log Data on a Going-Forward Basis. I have personal knowledge of the facts set forth below and if called as a witness, could testify competently thereto. I graduated from the University of North Carolina (Chapel Hill) with an undergraduate degree in Computer Science, and then graduated from the Georgetown University Law Center.

2. On December 4, 2024, OpenAI publicly announced that it had reached 300 million users who use ChatGPT at least once a week.¹

3. OpenAI's data retention practices for ChatGPT conversation data are guided by OpenAI's Privacy Policy, which reflects the company's commitment to protecting users' privacy.²

4. Consistent with OpenAI's Privacy Policy, OpenAI retains ChatGPT user conversation data by default. Due to the technical burdens of data storage, OpenAI retains ChatGPT conversation data in a compressed format in a distributed table. At present that distributed table contains [REDACTED] of compressed data. As of January 2025, this table contained more than [REDACTED] ChatGPT user conversations.

5. As described in the Privacy Policy, ChatGPT users may, subject to narrow exceptions, use in-product options to opt out of having their ChatGPT conversation data retained. These functions have been introduced over time since ChatGPT's launch. OpenAI has invested

¹ *OpenAI Newsroom (@OpenAINewsroom)*, "Fresh numbers shared by @sama earlier today: 300M weekly active ChatGPT users" X (formerly Twitter) (Dec. 4, 2024, 1:17 PM), available at <https://x.com/OpenAINewsroom/status/1864373399218475440>.

² See OpenAI, Privacy Policy (Updated Nov. 4, 2024) available at <https://openai.com/policies/row-privacy-policy/> (Accessed Dec. 31, 2024).

engineering time in building and maintaining these features to provide its users with control over their data, as described in our Privacy Policy.

6. For example, a user may designate a ChatGPT conversation as temporary,³ elect to delete a ChatGPT conversation,⁴ or elect to delete their entire ChatGPT conversation history or account.⁵ When a user designates a conversation as temporary or deletes it, OpenAI's standard practice is to purge such ChatGPT conversation data associated with a user's account within 30 days, with limited exceptions.

7. Since The New York Times filed the first of the consolidated news lawsuits against OpenAI on December 27, 2023, more than [REDACTED] ChatGPT user accounts have been created. Between December 27, 2023 and January 2025, those accounts alone have engaged in more than [REDACTED] conversations (each, a collection of messages sent by a user to ChatGPT, and ChatGPT's response).

8. I am aware that the News Plaintiffs have inquired into the feasibility of OpenAI overriding user retention preferences so as to retain ChatGPT user conversations containing any of the News Plaintiffs' content, even if those users had opted out of having their ChatGPT conversation data retained. Since December 10, 2024, OpenAI has worked diligently to evaluate the technical feasibility of the News Plaintiffs' request.

9. OpenAI does not have the existing technological functionality to fulfill Plaintiffs' request to preserve only user conversations which reference Plaintiffs' content. The existing

³ *Temporary Chat FAQ*, OpenAI, <https://help.openai.com/en/articles/8914046-temporary-chat-faq> (last visited Jan. 16, 2025).

⁴ *How Chat Retention Works in ChatGPT*, OpenAI, <https://help.openai.com/en/articles/8809935-how-chat-retention-works-in-chatgpt> (last visited Jan. 16, 2025).

⁵ *How to Delete Your Account*, OpenAI, <https://help.openai.com/en/articles/6378407-how-to-delete-your-account> (last visited Jan. 16, 2025).

distributed tables with compressed conversation data described above operate on a user and date basis; they do not operate on the basis of the content of a conversation/message. Based on estimates provided to me by OpenAI's privacy engineering team, they would need to design a system to address these needs. The privacy engineering team estimates that such a system would require [REDACTED]

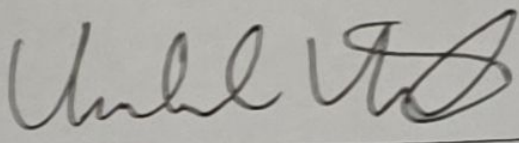
[REDACTED] Additional work would then be required to achieve a minimum viable concept, followed by non-trivial ongoing reliability maintenance engineering work committed to the system. OpenAI is unable to reliably estimate this maintenance work without a more detailed specification.

10. Reallocating the above-described full-time engineering resources to build a custom solution to override user privacy preferences would impair OpenAI's other ongoing initiatives and operations.

11. It would also harm OpenAI's reputation and customer relationships to override its ChatGPT conversation data retention practices for the purposes of plaintiffs' United States litigation. OpenAI is concerned about the impact a systematic change to its user conversation data retention practices could have internationally, where OpenAI is subject to a range of global privacy laws with different standards.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 16th day of January 2025 in Redwood City, CA.

By: 
Michael Trinh
Associate General Counsel
OpenAI